

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 24 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

M/S.SANDEEP AGENCY

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR SN SOPARKAR for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 06/08/98

ORAL JUDGEMENT (Per C.K. Thakker, J.)

1. This is an application filed by the assessee under Section 256 (2) of the Income Tax Act, 1961, for directing the Tribunal to refer the following questions for the opinion of this Court:

"(1) Whether the Tribunal was right in law in

upholding the decisions of the authorities below that the expenditure of Rs.77,925/- being expenditure incurred on making wooden partition in the leased premises was rightly disallowed as capital expenditure?

- (2) Whether the Tribunal was right in law in holding that the binding decision of the Honourable Gujarat High Court in the case of CIT v. Mehta Transport Co. (1986) 160 ITR 35 was distinguishable?
- (3) Whether the Tribunal was right in law in holding that a sum of Rs.37,000/- being the amount of cash seized in course of search and seizure operations under section 132 was liable to be added as applicant's income from undisclosed sources?
- (4) Whether the Tribunal was right in law in relying on the proceedings under section 132 (5) of the Act in reaching the conclusion that the impugned amount was liable to be added as applicant's income from undisclosed sources?
- (5) Whether the Tribunal was right in law in holding that the impugned addition was properly made under section 69A of the Act rejecting the evidence produced by the applicant in course of assessment proceedings?
- (6) Whether the Tribunal has failed to distinguish between the absolute presumption under Section 132 (4) of the Act and rebuttable presumption under Section 69A of the Act?
- (7) Whether the Tribunal has failed to draw distinction between the proceedings under Section 69A of the Act and Section 132(5) of the Act?
- (8) Whether the Tribunal had failed to take note of the fact that provisions of Section 69A of the Act do not override the provisions of Section 132 (5) of the Act?
- (9) Whether the Tribunal's decision to uphold the impugned addition is based on evidence and material on record?"

2. So far as question No.1 and 2 are concerned, they relate to the nature of expenditure and in our opinion, a

question of law does arise from the decision of the Income Tax Appellate Tribunal. However, it will be sufficient to raise question No.1 because it will cover both questions.

3. So far as the remaining questions No.3 to 9 are concerned, essentially they are based on findings of fact. No question of law, therefore, arises from the decision of the Tribunal.

4. We, therefore, direct the Tribunal to refer the following question for the opinion of this Court:

The Income Tax Appellate Tribunal, Ahmedabad to refer to this Court the question No.1 as set out in para-5 of this application for opinion of this Court under Section 256 (2) of the Income Tax Act, 1961.

5. The Income Tax Appellate Tribunal, Ahmedabad to refer the above question to this Court under Section 256 (2) of the Income Tax Act, 1961.

6. Rule is made absolute to the above-said extent.
No order as to costs.
